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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 349

MARY COOLEY ROY, *Petitioner*,

v.

LEONARD C. ROY, SR., *Respondent*.

Petition for Writ of Certiorari to the Supreme Court of Florida

---

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In The

Supreme Court of the United States

October Term, 1954

No.

Mary Cooley Roy, *Petitioner,*

v.

Leonard C. Roy, Sr., *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Mary Cooley Roy, petitioner, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Florida entered in the above-entitled case on June 15, 1954.

CITATIONS TO OPINIONS BELOW

The memorandum opinion of the trial court contained in the final decree (R. 909-910) is unreported and is printed in Appendix B hereto, infra P. 12-13. The opinion of the Supreme Court of Florida, printed in Appendix B hereto, infra. P. 11-12, is reported in 73 So. (2d) 294.

JURISDICTION

The judgment of the Supreme Court of Florida was entered on June 15, 1954 (R. 935). Rehearing was denied on July 5, 1954. (R. 942).

The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257 (3), since a right set up and claimed under the Constitution and a statute of the United States, the according of full faith and credit to a prior judgment of the District of Columbia court, was denied petitioner.

QUESTION PRESENTED

Where court of District of Columbia granted to wife a judgment for limited divorce on ground of husband's desertion, and in said judgment made a finding that she "was without fault in the separation of the parties," there being no question as to the jurisdiction of the District of Columbia Court either over the subject matter or the parties, is such judgment, with such finding, properly pleaded, entitled to full faith and credit in the courts of Florida so as to constitute a bar to a divorce suit filed there by the husband on the ground of wife's habitual intemperance and misconduct toward him during the same period as that covered in the District suit?

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

The Constitutional provision involved is Article 4, Section 1 (full faith and credit clause), as implemented by 28 U.S.C., Section 1738. They are printed in Appendix A, infra, p. 10.

STATEMENT

On September 24, 1952, Leonard C. Roy, hereinafter called Respondent or the husband, filed suit for divorce against his wife, Mary Cooley Roy, hereinafter called Petioner or the wife, in the Circuit Court of Palm Beach County, Florida (R. 1-10), App. C, infra, p. 12-13. The bill of complaint alleged that the parties were married in 1922 and lived together until their separation in July, 1945; that there were two living children of the marriage, both of whom were adults and had their own homes. The matrimonial domicile of the parties during their married life was in Washington, D. C., and most of the material events occurred there.

The complaint further charged petitioner with various acts of excessive drinking and sought the divorce not only

on the grounds of cruelty and habitual intemperance, but also on the ground of desertion, claiming that petitioner by her conduct had forced respondent to leave her and that accordingly she was, constructively, the deserter.

On October 20, 1952, petitioner filed a motion for stay of the proceedings (R. 10-29), setting forth that on September 18, 1952, about a week before the institution of the case at bar, she, the wife, had filed suit in the District of Columbia against the husband for a limited divorce on the grounds of two years' desertion of her by him, and cruelty. The motion sought the stay of the present suit because the District of Columbia Court had first acquired jurisdiction of the parties and of the issues involved. Attached to the motion were exemplified copies of the District of Columbia proceedings (R. 15-26).

On October 21, 1952, the Circuit Court entered an order denying the motion for stay of proceedings (R. 30). On October 24, 1952, petitioner answered the complaint, denying respondent's allegations and charges, again setting up the District of Columbia suit, and seeking dismissal of the complaint. She did not counterclaim for a divorce (R. 30-40).

There were no further material steps taken in the present case until after the conclusion of the District of Columbia suit. At the beginning of the trial of the Florida suit on February 4, 1953, petitioner filed an amendment to her answer (R. 41-56) setting up the fact that the District of Columbia litigation had terminated in her favor by the entry of a judgment on December 19, 1952, awarding her a limited divorce. Attached to the amendment were exemplified copies of the further District of Columbia proceedings (R. 43-56), including the District of Columbia judgment (R. 52-54), App. C, infra, p. 19-21.

In this judgment the Court found that the husband had deserted the wife in 1945 and that the wife was without fault in the separation and had endeavored at all times to effect a reconciliation. The judgment awarded to the

wife the husband's half interest in real estate in the District of Columbia. The amendment to the answer asserted that the District of Columbia judgment was a bar to further prosecution of the present suit and sought dismissal of the latter. It also prayed for general relief.

On February 12, 1953, the Court entered a final decree granting a divorce to respondent and denying petitioner any alimony or counsel fees. The decree failed to reserve jurisdiction to award alimony in the future (R. 909-910), App. B, infra. p. 12-13. On appeal to the Supreme Court of Florida, that court affirmed (R. 932-933), App. B, infra, p. 11-12.

As hereinbefore shown, the federal question sought to be reviewed was raised by petitioner (a) by amendment to answer setting forth the District of Columbia judgment and pleading the same in bar of the Florida action (R. 41-56); (b) by argument at trial (R. 62-63), and the trial court's adverse decision in its final decree (R. 909); and (c) the contention in the court below, and its adverse ruling, as appears from its opinion (R. 932-933), App. B, infra, p. 11-12.

REASONS FOR GRANTING THE WRIT

The court below has decided a federal question in a way which is in conflict with applicable decisions of this court. It is the contention of the petitioner that the Court erred in declining to dismiss this suit because of the prior District of Columbia suit and judgment; that by so doing the Court failed to give full faith and credit to the District of Columbia judgment, as is required by the United States Constitution; and that respondent was precluded by the Washington, D. C., judgment from relitigating the issue of the effect of petitioner's alleged conduct, either by the doctrine of res judicata or by the doctrine of estoppel by judgment.

The cases in Florida and elsewhere are legion on the various phases of the application of the doctrines of res judicata and estoppel by judgment, in divorce cases, with relation to the full faith and credit clause of the Federal

Constitution. In the present situation, the parties in the District of Columbia suit and the Florida suit are the same, of course. The issues were the same, in that in order to prevail in the District of Columbia suit it was necessary for the wife to show that she was without fault in the separation between the parties. By her complaint in the District of Columbia suit (R. 17-19), App. C, infra, p. 16-18, she put in issue the question as to who was at fault in the separation. Respondent, in his complaint in the Florida suit, put in issue exactly the same point, claiming that by petitioner's conduct she forced him to leave and was the deserter. The issue first arose in the Washington, D. C., suit and was first determined in that suit in favor of the wife.

It is not material whether the bar against the relitigation of this issue is that of res judicata or of estoppel by judgment. There are fine distinctions between these two doctrines, which it is not material to solve in the present case. It appears that the Florida suit is predicated upon substantially the same cause of action as was the District of Columbia suit, and hence res judicata applies. However, if it is not considered that it was so predicated, then under the doctrine of estoppel by judgment, the fundamental issues common to both causes of action, and which were actually adjudicated in the prior litigation, cannot be relitigated.

Concisely summarized, the question common to both suits was whether the fault of the wife had caused the separation. The wife claimed that it had not and the husband contended that the wife's excessive drinking was the cause of the separation. The District of Columbia court first held that the wife was without fault and that the husband deserted her. This material issue could not be relitigated in the subsequent Florida suit and trial.

It seems clear that the Florida Court was required by the United States Constitution to give the Washington, D. C., judgment the same full faith and credit, i.e., the

same full effect which it would have had in a subsequent suit in the District of Columbia. See *Cheever* v. *Wilson*, 9 Wall. 108, 19 L. Ed. 604, wherein the court held that a decree of divorce by a court having jurisdiction of the parties and subject-matter, if valid and effectual in the state when rendered, must be given the same effect in other states.

It is apparent that relitigation of these issues would be barred in a subsequent District of Columbia suit. The outstanding District of Columbia case on this point is *Gill* v. *Gill* (1945) 79 U. S App. D. C. 357, 147 F. (2d) 154, which held that where wife brought action for divorce from bed and board, or, in the alternative, for separate maintenance, judgment for separate maintenance was a finality as to every matter which was offered and received to sustain or defeat the case.

> "Even if the [subsequent] suit is for a different cause of action, the right, question, *or fact* once so determined [in prior action] must, as between the same parties, be taken as conclusively established, so long as the judgment in the first suit remains unmodified."

The court further held that the judgment, filed on October 24, 1941, was res judicata that wife was *justified in living apart from* her husband and was entitled to separate maintenance and a finding in the husband's subsequent action for divorce instituted on March 19, 1942, of desertion by the wife continuing for more than two years preceding institution of his action, and judgment granting husband a divorce for such desertion, could not stand.

It is likewise apparent in the instant case that the wife's alleged cruelty to the husband, if established, would have constituted a justification legally of his leaving her, and therefore would have been a defense in the District of Columbia suit for a limited divorce on the ground of two years' desertion. This appears from *Helvestine* v. *Helvestine* (1937), 67 App. D.C. 121, 89 F. (2d) 970:

Where, in wife's action for divorce, husband filed cross-bill praying for divorce a vinculo and for general relief, and court found that wife's cruelty justified husband in leaving, trial court under prayer for general relief had authority to award him a limited divorce.

In the instant case there can be no question but that in any subsequent litigation in the District of Columbia, the District of Columbia judgment would bar the husband from any attempt to assert that the wife was at fault in the separation of the parties; and from asserting that the husband had any justification or excuse (such as the wife's habitual intemperance) for deserting her. The District of Columbia court specifically found the opposite.

Therefore, since the Florida Courts are required by the full faith and credit clause of the United States Constitution to give the District of Columbia judgment the same effect that it would be given in the District of Columbia, it is apparent that the prior District of Columbia judgment is a bar to the attempted relitigation in Florida of the question of fault of the parties, including the alleged excessive drinking of the wife.

The landmark case in this Court on this subject is *Harding* v. *Harding* (1905), 198 U. S. 317, 49 L. Ed. 1066, 25 S. Ct. 679.

In that case the wife obtained in Illinois a decree for separate maintenance which contained a finding that she was living separate and apart from her husband *without fault on her part.* Thereafter, the California courts refused to recognize the Illinois decree as res judicata and as a bar in the husband's suit in California for a divorce on the ground of desertion. In this Court it was contended by the husband that the two issues were not identical, but the Court found that they were and reversed. The court's opinion, by Mr. Justice White, contains the following:

Referring to the Illinois decree:

> "... which decree necessarily conclusively settled that the separation was for cause and was without fault on the part of the wife." (198 U.S. 338).

So also does the Washington decree in the case at bar contain such a finding as to the wife.

Commenting upon the husband's contention:

> "... the proposition of facts upon which the argument rests admits simply to denying all effect to the Illinois decree." (id.)

So, too, does the proposition upon which respondent rests his argument in the case at bar result in denying all effect to the District of Columbia decree.

> "That the issue of willful desertion presented in the divorce action was identical with the issue of absence without fault presented in the Illinois maintenance suit is manifest." (id.)

Similarly, the determination by the Circuit Judge in the case at bar that petitioner had been guilty of cruelty to respondent is identical with the issue as determined by the District of Columbia court that she was without fault in the separation of the parties.

In this connection, it is to be noted that Section 403, Title 16 of the District of Columbia Code makes cruelty a ground for a limited divorce, and later, for enlargement into a decree of absolute divorce. Cruelty, therefore, constitutes "fault" under the law of the District of Columbia; and when the District of Columbia court determined that the wife was without fault, the later determination by the Florida court was directly to the contrary, and constituted a denial of full faith and credit to the prior District of Columbia finding and judgment.

The District of Columbia court first acquired jurisdiction of the parties and of the subject matter, and the District of Columbia judgment entered prior to the trial of this case constituted a bar to the continued maintenance of this suit and the latter should have been dismissed at final hearing.

In failing to give full faith and credit to the prior judgment of the District of Columbia court, the court below erred.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN ALEXANDER,
JOSEPH SITNICK,
Counsel for Petitioner

APPENDIX A

CONSTITUTIONAL AND STATUTORY PROVISIONS CITED

Constitution, Article IV, Section 1:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved and the Effect thereof."

28 U. S. C., Section 1738, June 25, 1948, C. 646, 62 Stat. 947:

> State and Territorial statutes and judicial proceedings; full faith and credit.
>
> The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory of Possession thereto.
>
> The records and judicial proceedings of any court of any such State, Territory, or Possession or copies thereof shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions they have by law or usage in the courts of such state, Territory or Possession from which they are taken.

APPENDIX B

OPINIONS AND JUDGMENT BELOW

(R 932-933)

IN THE SUPREME COURT OF FLORIDA
JUNE TERM, A. D. 1954—DIVISION A

MARY COOLEY ROY, *Appellant,*

v.

LEONARD C. ROY, *Appellee.*

PALM BEACH COUNTY
CASE NO. 25,024

Opinion filed June 15, 1954.

An appeal from the Circuit Court for Palm Beach, C. E. Chillingworth, Judge.

Wideman, Caldwell, Pacetti & Robinson and Manley P. Caldwell, for Appellant.

W. Q. Cain, for Appellee.

MATHEWS, J.:

This is an appeal from a final decree of divorce. One of the principal issues in this suit is that there had been filed and was pending at the time of these proceedings, a suit in Washington, D. C., for a divorce mensa et thoro. A judgment was entered in that suit whereby the wife received title to certain real property and claims that such suit operated as res judicata upon the final decree of divorce now under review or worked an estoppel by judgment as to the appellees cause of action.

The causes of action were entirely different. In the Washington, D. C. suit the appellant merely alleged desertion and cruelty as a ground for separate maintenance. In the Florida suit for divorce the appellee alleged habitual intemperance together with extreme cruelty and desertion as the grounds for divorce. The record shows that habitual intemperance was not an issue in the Washington, D. C. suit and it was an issue in the Florida suit, and the evidence was more than sufficient to sustain the Chancellor in finding that the appellant had been guilty of habitual intemperance. All of the assignments of error, pleadings, testimony and final decree of the Chancellor have been carefully reviewed, and the final decree of the Chancellor was without reversible error.

It is, therefore, ordered that the final decree of the Chancellor be and the same is hereby affirmed.

ROBERTS, C. J., TERRELL AND SEBRING, JJ., CONCUR.

(R 909-910)

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY. IN CHANCERY.

No. 30,147.

LEONARD C. ROY, *Plaintiff*,

v.

MARY COOLEY ROY, *Defendant*.

FINAL DECREE

This cause was again duly tried by the Court.

The record in the former suit, being Chancery No. 29,687, Palm Beach County, was accepted as a part of the record in this case.

These records present a tragic story of what was once a very happy married life, with two adult sons, one sympathetic with one parent, and one sympathetic with the other parent.

No useful purpose would be served in discussing the issues in the case, or the views of the Court upon these issues, except to say that it is the judgment of the Court that the testimony is ample to sustain the grounds of divorce alleged in the complaint in this suit. The proof is also sufficient to show that plaintiff, at the time of the institution of this suit, was a bona fide resident of Florida, and had been one for more than ninety days previous to that time, and that he is still a resident of Florida.

It is the view of this Court that the Washington Decree dated December 19, 1952, constitutes no bar to the entry of this decree.

Concerning alimony or a property settlement and counsel fees, it is apparent that this defendant has taken over the former home place in Washington, so that the plaintiff no longer has any interest in it. The defendant has an income of some three or four times greater than the income of plaintiff. The plaintiff is without assets except as to his clothing and automobile, and a few personal effects.

It is the view of the Court that it would not be equitable at this time to require the plaintiff to pay alimony or effect a further property settlement, or to pay counsel fees for counsel for the defendant, and that in any event, plaintiff does not have the ability to make such payments. Thereupon,

IT IS ORDERED that the equities of this cause are with the plaintiff; that the plaintiff be divorced from the defendant a vinculo matrimonii, with costs of this cause taxed against the plaintiff.

Copy furnished counsel.

DONE AND ORDERED this February 12, A.D. 1953.

C. E. CHILLINGWORTH,
Circuit Judge.

EXCERPTS FROM RECORD

APPENDIX C

On the 24th day of September, 1952, Bill of Complaint for Divorce was filed in the words and figures following, to wit:

Filed Sept. 24, 1952. J. Alex Arnette, Clerk of Circuit Court

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY. IN CHANCERY.

No. 30,147.

(R 1-2)

LEONARD C. ROY, *Plaintiff*,

v.

MARY COOLEY ROY, *Defendant*.

BILL OF COMPLAINT FOR DIVORCE

Leonard C. Roy, a resident of West Palm Beach, Palm Beach County, Florida, brings this Bill of Complaint against Mary Cooley Roy, a resident of Washington, District of Columbia, and alleges:

1. The Plaintiff now resides in the State of Florida, and has resided in the State of Florida for more than ninety (90) days before the filing of this Bill of Complaint. The Plaintiff's place of residence is 305 South Flagler Drive, West Palm Beach, Palm Beach County, Florida. The Defendant's place of residence is Embassy Apartments, 1613 Harvard Street, N.W., Washington, District of Columbia. Both the Plaintiff and Defendant are over

the age of twenty-one (21) years, and neither of them is under any disability which would prevent the institution and maintenance of this suit.

2. The Plaintiff and Defendant were lawfully married, each to the other, at Alexandria, Virginia, on July 29, 1922, and the marital relationship and status created by said marriage continues to exist to this day.

3. The Plaintiff and Defendant lived and cohabited together as husband and wife from the date of their marriage, as aforesaid, until on or about July 27, 1945, except that during the period from on or about March 8, 1945, until on or about July 1, 1945, the Plaintiff was compelled to and did live separately and apart from the Defendant because of her misconduct as hereinafter stated. On or about July 27, 1945, the Plaintiff was compelled to and did leave the Defendant and the then home of the parties at 1613 Harvard Street, N.W., Washington, D. C., and to live elsewhere because of the misconduct of the Defendant toward the Plaintiff as hereinafter stated. The parties have not lived nor cohabited together as husband and wife since on or about July 27, 1945.

4. At all times since the marriage of the Plaintiff and Defendant, as aforesaid, and until the final separation of the parties on or about July 27, 1945, as aforesaid, the Plaintiff has conducted himself toward the Defendant as the kind, faithful, affectionate, dutiful and provident husband of the Defendant, and has at all such times discharged all duties incumbent upon him as such husband of the Defendant.

* * * * * * * * * *

Filed Sept. 18, 1952. Harry M. Hull, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

(R 17-19)

MARY C. ROY, *Plaintiff*,
1613 Harvard Street, N.W., Washington, D. C.

v.

LEONARD C. ROY, SR., *Defendant*.

Civil Action No. 4215-52

COMPLAINT FOR LIMITED DIVORCE AND/OR SEPARATE MAINTENANCE
(Cruelty and/or Desertion)

The complaint of Mary C. Roy, respectfully shows to the Court as follows:

1. That she is an adult citizen of the United States and an actual bona fide resident of the District of Columbia, having been such resident for more than two years prior to the institution of this suit, which is filed herein in her own right, and since the separation of the parties hereto, the plaintiff has resided at 1613 Harvard Street, Northwest, Washington, D. C.

2. That the defendant, Leonard C. Roy, Sr., is likewise an adult citizen of the United States and a bona fide resident of the District of Columbia, but has been absent from the District of Columbia temporarily for at least six months, having been in West Palm Beach, Florida for the purpose of attempting to secure a divorce there; that his last known post office address, place of abode, and temporary residence is 305 South Flagler Drive, West Palm Beach, Florida.

3. That heretofore, on, to-wit, July 29, 1922, the plaintiff and the defendant, Leonard C. Roy, Sr., were lawfully married in Alexandria, Virginia, and of said marriage three children have been born, Leonard C. Roy, Jr., who is 28 years of age; Robert Roy, who is 26 years of age; and Donald B. Roy, who died in 1936 at the age of 2½ years.

4. That subsequent to the marriage of the parties hereto, they lived and cohabited together as husband and wife, until, to-wit, July 28, 1945, when the defendant, Leonard C. Roy, Sr., deserted the plaintiff while they were living at 1613 Harvard Street, Northwest, Washington, D. C., and said desertion has continued without interruption or cohabitation, and until the present time.

5. That the defendant, Leonard C. Roy, Sr., has treated plaintiff with extreme cruelty.

6. Plaintiff avers that the defendant, Leonard C. Roy, Sr., has failed and refused, and continues to fail and refuse, to adequately support and maintain the plaintiff, although well able so to do; and that defendant has an income of approximately $11,000.00 per annum.

7. That the defendant has carried on an illicit affair with another woman with whom he has openly consorted for many years, causing the plaintiff great emotional and nervous strain and distress, which has adversely affected the physical health of the plaintiff.

8. That the plaintiff and the defendant are the owners, as tenants by the entirety, of the premises known as 4425 Fessenden Street, Northwest, in the District of Columbia, together with household effects therein contained.

9. Plaintiff avers that she did not consent to the separation of the parties, that she was and is without blame and fault in the matter of the separation of the parties, and accordingly believes from all the facts and circumstances of this case that she is entitled to have a declaratory judg-

ment entered by this Court, determining the date and fault of the separation of the parties hereto to be resting with the defendant; that this action is brought under Section 2201 of the Judicial Code, 28 U.S.C., because there is an actual controversy now existing between the parties, in respect to which the plaintiff needs a declaration of her rights by this Court.

Wherefore, the premises considered, plaintiff prays the judgment of this Court:

1. That she be awarded a limited divorce from the defendant, Leonard C. Roy, Sr., on the ground of two years' desertion or on the ground of cruelty.

2. That the plaintiff be awarded alimony or separate maintenance, both pendente lite and permanently, from the defendant, Leonard C. Roy, Sr., for her support.

3. That, pendente lite and permanently, the plaintiff be awarded suit money, including counsel fees, and costs.

4. That she be awarded the ownership of the real estate and household effects located at 4425 Fessenden Street, Northwest, Washington, D. C.

5. That a declaratory judgment be entered herein, determining the date and fault of the separation between the plaintiff and the defendant.

6. And for such other and further relief as the nature of the case may require, and to the Court may seem just and proper.

• • • • • • • • • •

Filed Dec. 19, 1952. Harry M. Hull, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

(R 52-54)

MARY C. ROY, *Plaintiff,*

v.

LEONARD C. ROY, SR., *Defendant.*

Civil Action No. 4215-52

JUDGMENT AWARDING LIMITED DIVORCE
(Two Years' Desertion)

This cause came on to be heard upon the pleadings filed herein, and the evidence adduced in open Court, and the Court having found:

(a) That the plaintiff, Mary C. Roy, is a resident of the District of Columbia, and has been such a resident for more than two years prior to the filing of her complaint herein.

(b) That the plaintiff and the defendant, Leonard C. Roy, Sr., were lawfully married in Alexandria, Virginia, on, to-wit, July 29, 1922, and of said marriage three children were born, Leonard C. Roy, Jr., now 28 years of age, Robert Roy, now 26 years of age, and Donald B. Roy, who died in 1936 at the age of 2½ years.

(c) That following the marriage of the parties they lived and cohabited together as husband and wife only in the District of Columbia; and that the District of Columbia is the only matrimonial domicile of the parties.

(d) That the defendant, Leonard C. Roy, Sr., without justification or excuse, deserted the plaintiff on, to-wit, July 28, 1945, while they were living at 1613 Harvard Street, Northwest, in the District of Columbia, and such desertion has continued without interruption or cohabitation for more than two (2) years prior to the filing of the compaint herein, and until the present time.

(e) That the plaintiff, Mary C. Roy, is without fault in the separation of the parties and has endeavored at all times to effect a reconciliation with the defendant.

(f) That the plaintiff and the defendant are the owners, as tenants by the entirety, of the premises known as 4425 Fessenden Street, Northwest, in the District of Columbia, together with household effects therein contained.

(g) And, that the plaintiff has established all of the other material facts alleged in her complaint.

The Court concludes, as a matter of law, that the plaintiff, Mary C. Roy, is entitled to a divorce a mensa et thoro from the defendant, Leonard C. Roy, Sr., on the ground of desertion for more than two years; and that the plaintiff is entitled to be awarded the real and personal property, known as premises 4425 Fessenden Street, Northwest, in the District of Columbia, together with the household furniture and furnishings therein contained.

It is, therefore, by the Court, this 19th day of December, 1952,

Ordered, Adjudged, and Decreed:

1. That the plaintiff, Mary C. Roy, be, and she hereby is, awarded a divorce a mensa et thoro from the defendant, Leonard C. Roy, Sr., on the ground of desertion for two years.

2. That the plaintiff, Mary C. Roy, be and she hereby is, awarded title to the real estate known as premises 4425 Fessenden Street, Northwest, in the District of Columbia, together with the household furniture and furnishings

therein contained, heretofore jointly owned by the plaintiff and the defendant as tenants by the entirety, subject however to all encumbrances of record.

*WALTER W. RYTRAIN,
U. S. District Judge.

Seen:

JOHN ALEXANDER,
Attorney for Plaintiff,

PETER G. CHACONAS,
Attorney appointed by the Court to Defend.

---

* This was obviously an error in transcribing the Judge's signature for the record. The U. S. District Judge's name should read "Walter M. Bastian."